IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.139 OF 2005
IN
ARBITRATION PETITION NO.65 OF 2005

M.C.G.B. Employees Sadashiv
Co-operative Housing Society Ltd. Appellants
vs.
1. M/s.Shiva-Prakash Associates & ors. Respondents

Mr.A.R.Shaikh with Mr.R.D.Soni for the appellants.

Mr.M.U.Pandey for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 20th June 2005

P.C.

Heard.

2. Admit.

3. Mr.M.U.Pandey, advocate waives service for the respondents.

4. Looking to the short controversy involved in the appeal, the appeal is heard and disposed of at this stage itself.

5. The petition filed by the present appellants under section 9 of the Arbitration and Conciliation Act, 1996

was rejected by the learned Single Judge on the ground that the Arbitrator was already in place and the appellants may apply for interim relief under Section 17 of the Act of 1996.

6. The learned counsel for the appellants submits that the Arbitrator Mr.Jayant Tipnis named in clause 11 of the Contract has refused to act as the Arbitrator and, therefore, there is no question of the appellants making an application under Section 17 of the Act of 1996 before the Arbitrator and that the Arbitrator cannot be said to be in place.

7. Mr.M.U.Pandey, the learned counsel for the respondents contended that the named Arbitrator refused to act as the Arbitrator after the impugned order came to be passed. He also contended that the appellants are not entitled to any relief.

8. The learned Single Judge dismissed the petition filed by the present appellants under Section 9 of the Act of 1996 on two grounds; (one) that the Arbitrator was already in place and (two) that it was not disclosed why the petitioner could not move the Arbitrator for interim relief under Section 17 of the Act of 1996.

9. In view of the admitted position that the named

Arbitrator Mr.Jayant Tipnis has refused to act as the Arbitrator, the two reasons cited by the learned Single Judge which led to the dismissal of the petition under Section 9 cannot be said to survive. In our view, the petition needs reconsideration by the learned Single Judge.

10. We, accordingly, set aside the order dated 16th February 2005. The Arbitration Petition No.65/2005 is restored to file for fresh consideration in accordance with law. The appeal is disposed of with no order as to costs.

11. The interim order dated 25th February 2005 passed in this appeal shall remain operative for two weeks to enable the appellants to apply to the learned Single Judge for consideration of the matter afresh.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)